

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. SPU-00-4 (SPU-98-8)
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FINAL DECISION AND ORDER

(Issued June 26, 2000)

I. PROCEDURAL HISTORY

On March 13, 2000, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a petition asking that MidAmerican be allowed to enter into a purchase power contract for 250 MW with Cordova Energy Company LLC (Cordova), an affiliate of MidAmerican. The contract would run through May 14, 2004. In the merger proceeding involving CalEnergy Company Inc., MidAmerican Energy Holdings Company, and MidAmerican, identified as Docket No. SPU-98-8, MidAmerican and the other applicants committed that MidAmerican would not have any contracts with power plants built or acquired by affiliates without the consent of the Board.

In addition, because Cordova is an exempt wholesale generator, section 32(k) of the Public Utility Holding Company Act (PUHCA) requires the Board to make certain determinations before the purchase power agreement can be effective. The Board must find that the agreement will benefit consumers, does not violate state law, does not provide any unfair competitive advantage, and is in the public interest.

On March 28, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to MidAmerican's petition. The Board docketed the filing, established a procedural schedule, and required MidAmerican to file additional information by order issued April 27, 2000. A hearing was held on June 6, 2000.

II. DISCUSSION

Section 32(k) of PUHCA prohibits an electric utility company from purchasing electric energy at wholesale from an affiliated exempt wholesale generator unless the state commission (i.e., Board) makes a determination that the transaction will benefit consumers, does not violate any state law, does not provide an unfair competitive advantage, and is in the public interest. In addition, the Board must make a determination that it has sufficient regulatory authority, resources, and access to books and records of MidAmerican and Cordova to make the aforementioned determinations.

The Board's broad regulatory authority pursuant to Iowa Code chapter 476 and its specific authority with respect to affiliate transactions, Iowa Code § 476.71 through 476.83, grant the Board sufficient regulatory authority, resources, and access to books and records of MidAmerican and Cordova to make the determinations required by PUHCA. Pursuant to the Board's statutory authority, 199 IAC chapter 31 was adopted. This chapter contains, among other things, requirements for annual affiliate filings and standards for asset and service transfers

between a utility and its affiliate. In addition, the Board is empowered to retain a nationally or regionally recognized independent auditing firm to conduct an audit of affiliate transactions. Iowa Code § 476.75.

The first PUHCA criterion is benefit to customers. MidAmerican testified its peak load has increased significantly and that it required both capacity and energy. In 1999 MidAmerican was close to not meeting the 15 percent reserve mandated by the Mid-Continent Area Power Pool (MAPP). Failure to meet the MAPP reserve requirement would have triggered significant financial penalties. The Cordova contract is for both capacity and energy.

Some questions were raised at hearing regarding whether there would be any circumstances where it would be beneficial for Cordova to choose willful nonperformance. Based on the contract and testimony, the Board is satisfied this possibility is remote and that the risk of nonperformance is no greater than in a contract with a nonaffiliate. However, in the event of nonperformance, MidAmerican will be required to file a report detailing the circumstances of the nonperformance.

In determining benefits to customers, rate impacts must also be examined. MidAmerican used an open bidding process to determine the least-cost provider. Based on the proposals received, Cordova is the least-cost option currently available to MidAmerican. Generally, an open bidding process results in contracts that are the most favorable to customers.

As part of the settlement entered into by MidAmerican in Docket Nos. APP-96-1 and RPU-96-8, MidAmerican's energy adjustment clause was eliminated.

Therefore, no costs of this contract will be passed on to ratepayers until a rate proceeding is held before the Board. The Board explicitly reserves determination of any cost allowance issues to a future rate or other appropriate proceeding.

The second PUHCA requirement is whether the contract violates any state law. Nothing in Iowa law or the Board's rules prohibits this contract between MidAmerican and its affiliate. Iowa law does not mandate that MidAmerican submit a least-cost resource plan to the Board before entering into purchase power contracts with an affiliate or anyone else.

The third PUHCA requirement is whether the contract provides any unfair competitive advantage. The record indicates the bidding process was fair and open, resulting in a contract at the prevailing market price. The Board's statutes and rules provide any additional protections needed to ensure that there are no cross-subsidies between MidAmerican and Cordova. See Iowa Code § 476.71 and 199 IAC chapter 31.

The final PUHCA criterion is that the contract is in the public interest. MidAmerican's need for capacity and energy is mitigated by the contract, and the record demonstrates the contract is the least-cost option currently available. Consumer Advocate agrees that MidAmerican should be allowed to enter into the contract, but is concerned that MidAmerican did not and will not seriously consider self-construct options. In particular, while Consumer Advocate acknowledges Cordova represents the least-cost option currently available, Consumer Advocate argues that MidAmerican should have seriously considered the self-construct option

earlier, when it may have been the least-cost option. Consumer Advocate is also concerned MidAmerican will not seriously consider self-construct options when the Cordova contract expires.

In this proceeding, the Board only need decide whether to allow MidAmerican to enter into the Cordova contract. The Board does not need to decide the overall merits of MidAmerican's generation planning because it is apparent, and all parties agree, that MidAmerican needs capacity and energy now and Cordova is the least-cost option currently available. As noted earlier in the discussion regarding benefit to consumers, in a future rate or other appropriate proceeding, the Board and interested parties can examine the merits of MidAmerican's overall generation planning and determine the appropriate amount of the Cordova contract to allow in rates. A utility's failure to consider all reasonable capacity and energy options in its generation planning process may impact any cost recovery, and the Board expects each electric utility to consider all such options in its future planning.

III. FINDINGS OF FACT

1. It is reasonable to find the Board has sufficient regulatory authority, resources, and access to books and records to make the determinations required by PUHCA.
2. It is reasonable to find the Cordova contract will benefit consumers.
3. It is reasonable to find the Cordova contract does not violate any state law, including any least cost planning requirements.

4. It is reasonable to find the Cordova contract does not provide an unfair competitive advantage.

5. It is reasonable to find the Cordova contract is in the public interest.

VI. CONCLUSIONS OF LAW

The Board has jurisdiction of the parties and the subject matter in this proceeding.

VII. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. In satisfaction of the requirements of the Public Utility Holding Company Act and the Board's orders in Docket No. SPU-98-8, the Board grants MidAmerican Energy Company's request filed on March 13, 2000, that it be allowed to enter into a purchase power contract for 250 MW from Cordova Energy Company LLC, an affiliate of MidAmerican.

2. If there is nonperformance under the contract by Cordova, MidAmerican Energy Company shall file a report detailing the circumstances surrounding nonperformance within 15 days of the event.

3. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

4. The Board explicitly reserves determination of any cost allowance or disallowance issues to a future rate or other appropriate proceeding.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr. /s/ Diane Munns
Executive Secretary

Dated at Des Moines, Iowa, this 26th day of June, 2000.